



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 10, 1996

Mr. Terrence S. Welch.  
Vial, Hamilton, Koch & Knox, L.L.P.  
1717 Main Street, Suite 4400  
Dallas, Texas 75201

OR96-0530

Dear Mr. Welch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39018.

The City of Flower Mound (the "city") received a request for

1. All documents relating to the annexation by the Town of Flower Mound of the property located at 9225 Shawnee Trail and 4209 Apache Trail, Flower Mound, Texas;
2. All City ordinances or codes relating to the parking of any truck-tractor or semi-trailer on private property within a residential district at the time in which the above-referenced property was annexed and immediately following same;
3. Copies of any and all City ordinances or codes currently regulating the parking of truck-tractors or semi-trailers on private property within a residential district currently in existence and enforcement; and
4. Any and all maps which reference the boundary lines for the Town of Flower Mound as it existed in 1974.

You state that the city will release the ordinances and codes sought in items two and three above. You claim, however, that the requested information sought in items one and four is excepted from required public disclosure under section 552.103(a) of the Government Code. You have submitted a representative sample of the documents associated with the request at issue.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. To show that section 552.103(a) is applicable, the department must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the department must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

In this instance, the city has supplied this office with information which shows that litigation is pending, and this litigation involves the annexation and boundaries of the Flower Mound property. We also find that the documents submitted by the city are related to the reasonably anticipated litigation for the purposes of section 552.103(a).<sup>1</sup> The city may, therefore, withhold the information responsive to items one and four of the request for information.<sup>2</sup>

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<sup>1</sup>When the city initially sought this office's decision concerning the disclosure of the requested documents, you argued that because the documents were excepted by section 552.103(a) you need not be required to submit copies for our review. The fact that submitting copies for review to the Attorney General may be burdensome does not relieve a governmental body of the responsibility of doing so. Open Records Decision 497 (1988). You, however, responded promptly when we asked for copies of the information.

In this instance, your letter brief did not explain how the requested documents related to the pending litigation. Thus, section 552.103(a) would be inapplicable. After reviewing the submitted materials and the exhibits you provided with your letter, we were able to find that the documents were related to the pending litigation.

<sup>2</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the

We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

Additionally, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/rho

Ref.: ID# 39018

Enclosures: Submitted documents

cc: Mr. David Surratt  
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(w/o enclosures)

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withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.